

ASSEMBLY BILL

No. 1680

Introduced by Assembly Member Wieckowski

February 14, 2012

An act to amend Sections 1300 and 1301 of the Corporations Code, relating to dissenting shareholders' rights.

LEGISLATIVE COUNSEL'S DIGEST

AB 1680, as introduced, Wieckowski. Dissenting shareholders' rights.

Existing law, the General Corporation Law, provides for the formation and governance of general corporations, including the rights of shareholders of a corporation who dissent from approving a reorganization or short-form merger. Existing law provides that a holder of dissenting shares, as defined, who complies with certain procedures under specified circumstances is entitled to receive from the corporation the fair market value of the holder's shares, as defined, determined as of the day before the first announcement of the terms of the transaction. Existing law provides that holders of publicly traded shares are only eligible to receive the fair market value of their shares if demands for payment are filed with respect to 5% or more of the class of shares.

This bill would provide that the fair market value shall be the most recent closing price per share prior to the first announcement of the terms of the transaction. The bill would eliminate the provision making holders of publicly traded shares only eligible to receive the fair market value of their dissenting shares if 5% or more of the shares are dissenting shares. The bill would make conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 1300 of the Corporations Code is amended to read:

1300. (a) If the approval of the outstanding shares (Section 152) of a corporation is required for a reorganization under subdivisions (a) and (b) or subdivision (e) or (f) of Section 1201, each shareholder of the corporation entitled to vote on the transaction and each shareholder of a subsidiary corporation in a short-form merger may, by complying with this chapter, require the corporation in which the shareholder holds shares to purchase for cash at their fair market value the shares owned by the shareholder which are dissenting shares as defined in subdivision (b). The fair market value shall be ~~determined as of the most recent closing price per share prior to the day before the~~ first announcement of the terms of the proposed reorganization or short-form merger, excluding any appreciation or depreciation in consequence of the proposed action, but adjusted for any stock split, reverse stock split, or share dividend which becomes effective thereafter.

(b) As used in this chapter, “dissenting shares” means shares ~~which~~ that come within all of the following descriptions:

(1) ~~Which~~ That were not immediately prior to the reorganization or short-form merger listed on any national securities exchange certified by the Commissioner of Corporations under subdivision (o) of Section 25100, and the notice of meeting of shareholders to act upon the reorganization summarizes this section and Sections 1301, 1302, 1303 and 1304; provided, however, that this provision does not apply to any shares with respect to which there exists any restriction on transfer imposed by the corporation or by any law or regulation; ~~and provided, further, that this provision does not apply to any class of shares if demands for payment are filed with respect to 5 percent or more of the outstanding shares of that class.~~

(2) ~~Which~~ That were outstanding on the date for the determination of shareholders entitled to vote on the reorganization and (A) were not voted in favor of the reorganization or, (B) if described in paragraph (1) ~~(without regard to the provisos in that paragraph)~~, were voted against the reorganization, or were held of record on the effective date of a short-form merger; provided, however, that subparagraph (A) rather than subparagraph (B) of

1 this paragraph applies in any case where the approval required by
2 Section 1201 is sought by written consent rather than at a meeting.

3 (3) ~~Which~~ That the dissenting shareholder has demanded that
4 the corporation purchase at their fair market value, in accordance
5 with Section 1301.

6 (4) ~~Which~~ That the dissenting shareholder has submitted for
7 endorsement, in accordance with Section 1302.

8 (c) As used in this chapter, “dissenting shareholder” means the
9 recordholder of dissenting shares and includes a transferee of
10 record.

11 SEC. 2. Section 1301 of the Corporations Code is amended to
12 read:

13 1301. (a) If, in the case of a reorganization, any shareholders
14 of a corporation have a right under Section 1300, subject to
15 compliance with paragraphs (3) and (4) of subdivision (b) thereof,
16 to require the corporation to purchase their shares for cash, that
17 corporation shall mail to each ~~such shareholder of those~~
18 *shareholders* a notice of the approval of the reorganization by its
19 outstanding shares (Section 152) within 10 days after the date of
20 that approval, accompanied by a copy of Sections 1300, 1302,
21 1303, and 1304 and this section, a statement of the price determined
22 by the corporation to represent the fair market value of the
23 dissenting shares, and a brief description of the procedure to be
24 followed if the shareholder desires to exercise the shareholder’s
25 right under those sections. The statement of price constitutes an
26 offer by the corporation to purchase at the price stated any
27 dissenting shares as defined in subdivision (b) of Section 1300,
28 unless they lose their status as dissenting shares under Section
29 1309.

30 (b) Any shareholder who has a right to require the corporation
31 to purchase the shareholder’s shares for cash under Section 1300,
32 subject to compliance with paragraphs (3) and (4) of subdivision
33 (b) thereof, and who desires the corporation to purchase shares
34 shall make written demand upon the corporation for the purchase
35 of those shares and payment to the shareholder in cash of their fair
36 market value. The demand is not effective for any purpose unless
37 it is received by the corporation or any transfer agent thereof (1)
38 in the case of shares described *in* subdivision (b) of Section 1300
39 ~~(without regard to the provisos in that paragraph)~~, not later than
40 the date of the shareholders’ meeting to vote upon the

1 reorganization, or (2) in any other case within 30 days after the
2 date on which the notice of the approval by the outstanding shares
3 pursuant to subdivision (a) or the ~~notice filing~~ pursuant to
4 subdivision (i) of Section 1110 was mailed to the shareholder.

5 (c) The demand shall state the number and class of the shares
6 held of record by the shareholder which the shareholder demands
7 that the corporation purchase and ~~shall contain a statement of what~~
8 ~~that shareholder claims to be~~ at the fair market value of those
9 shares as of the day before the announcement of the proposed
10 reorganization or short-form merger. The statement of fair market
11 value constitutes an offer by the shareholder to sell the shares at
12 ~~that price determined pursuant to subdivision (a) of Section 1300.~~